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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass. Ave., 3rd Floor
Washington, D.C. 20536

JUL 08 2003

File: WAC 01 139 50279 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(L)

PUBLIC COPY

IN BEHALF OF PETITIONER: [redacted]

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an importer, exporter, and general retailer. It seeks to employ the beneficiary temporarily in the United States as its president and chief executive officer (CEO). The director determined that the petitioner had not established that a qualifying relationship exists between the U.S. entity and the beneficiary's foreign employer.

On appeal, counsel asserts that the director's decision was erroneous. Additional documentation is furnished.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

> (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
>
> (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

8 C.F.R. 214.2(l)(3)(v) states that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

> A) Sufficient physical premises to house the new office have been secured;
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> B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or

managerial authority over the new operation; and

C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:

(1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;

(2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and

(3) The organizational structure of the foreign entity.

At issue in this proceeding is whether a qualifying relationship exists between the U.S. petitioner and a foreign entity.

8 C.F.R. § 214.2(l)(1)(ii)(G) states:

Qualifying organization means a United States or foreign firm, corporation, or other legal entity which:

(1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;

(2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and

(3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

8 C.F.R. 214.2(l)(1)(ii)(I) states:

Parent means a firm, corporation, or other legal entity which has subsidiaries.

8 C.F.R. § 214.2(l)(1)(ii)(J) states:

Branch means an operation division or office of the same

organization housed in a different location.

8 C.F.R. § 214.2(l)(1)(ii)(K) states:

> *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

8 C.F.R. § 214.2(l)(1)(ii)(L) states, in pertinent part:

> *Affiliate* means (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
>
> (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

On Form I-129, the petitioner checked the box indicating that the U.S. entity is an affiliate of Bon Appetite Restaurant, located in Damascus, Syria. Contrary to the petitioner's claim that it is an affiliate of an overseas entity the petitioner states, in the same petition, that it is "owned in full by the alien." The petitioner further stated that the overseas entity is "owned jointly and equally with partner."

Given the lack of evidence, and contradictory claims on Form I-129, the Bureau requested additional evidence regarding a qualifying relationship between the U.S. and foreign entities. Specifically, the petitioner was asked to submit the following documentation: Notice of Transaction Pursuant to Corporations Code Section 25102(f) showing the total offering amounts of the petitioner's stock; the petitioner's minutes of the organizational meeting listing all shareholders and the number of shares owned; and the petitioner's stock ledger.

In response to the above request, counsel submitted a statement explaining that the petitioner is a start-up company and as such has issued no stock certificates and has not had an organizational meeting. Counsel further stated that, although the beneficiary is currently the sole owner of the petitioning entity, the beneficiary would eventually sell 49% of his shares. Those shares would be divided among two other partners who the petitioner claims have similar ownership interests in the foreign entity.

The director denied the petition, concluding that the petitioner

failed to establish that it had a qualifying relationship with an entity abroad at the time the petition was filed.

On appeal, counsel submits a statement reiterating the petitioner's prior claim that, when the director issued the request for additional evidence, the U.S. entity was in the start-up stage of development and was awaiting the Bureau's approval prior to apportioning its shares to shareholders other than the beneficiary. However, 8 C.F.R. § 103.2(b)(12) states, in pertinent part: "An application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application or petition was filed." Along with the statement on appeal, counsel submitted the petitioner's stock transfer ledger and stock certificates. The ledger and certificates indicate that the beneficiary transferred a portion of his stock ownership to two individuals in September 2001, seven months after the petition for an L-1A visa was filed.

The information submitted on appeal reaffirms counsel's prior claim that in February 2001, when the petition was filed, the beneficiary owned all of the U.S. entity's stock, while the ownership of the foreign entity was, according to the petitioner, split among the beneficiary and two other individuals. Accordingly, the petitioner has submitted insufficient evidence to establish that there was a qualifying affiliate relationship between the U.S. and foreign entities at the time the petition was filed. For this reason, the petition may not be approved.

Beyond the director's decision, the petitioner failed to submit evidence, pursuant to 8 C.F.R. § 214.2(l)(3)(v)(A), showing that it had secured a sufficient physical premises to house its business as of the filing date of the petition. The record contains a business lease which was submitted on appeal. The lease is dated May 25, 2001, several months after the petition was filed.

Furthermore, the evidence of record does not indicate that the beneficiary has been or will be employed in a qualifying managerial or executive capacity pursuant to 8 C.F.R. § 214.2(l)(3)(v)(B). However, as the appeal will be dismissed based on the issue of a qualifying relationship, neither of these two issues shall be addressed further.

In visa petition proceedings, the burden of proof remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.